IN THE HIGH COURT OF JUDICATURE AT PATNA
CR. REV. No.714 of 2005
OM NARAIN SINGH
Versus
STATE OF BIHAR & ORS
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4 12.8.2008. This Cr. Revision has been filed against the order dated 25.8.2005 passed by Sri R. C. Malviya, Judicial Magistrate, Bettiah in Complaint Case No. 2269 of 2002 therey he has dismissed the complaint petition under Section 203 Cr.P.C.

The complaint case, in brief, is that opposite party no. 2 Shailendra Singh had filed a title suit no. 23 of 1996 in the court of Munsif, Bettiah against the father of the complainant/petitioner and others. In that very suit, the court issued summons to the defendants for appearance. On 11.4.1996 the plaintiff sworn a false affidavit and filed in the court with regard to personal service of summons to all the three defendants who took summons but refused to sign though in reality only defendant no. 1 received summons on behalf of all the three defendants. The second allegation is that on 18.4.1996 the Court on the petition of the plaintiff directed the plaintiffs to approach local police for taking appropriate steps in order to protect the standing Rabi Crops by next date fixed in the case. No order was passed for submission of the report by the police but plaintiff in collusion with the staff of the Court got the order issued to the police without signature of the court and obtained a report from

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the police in order to cause injury to the complainant/petitioner.

It appears that first of all the petitioner filed Misc. Case No. 1 of 1999 for enquiry and filing of the complaint against the plaintiffs under Section 340 Cr.P.C. . However, court refused to lodge the complaint and directed the complainant/petitioner to approach criminal court. Thereafter, this complaint case was filed.

Learned magistrate after consideration of the facts and law cited by the complainant held that the complaint is barred under Section 195 Cr.P.C. and accordingly dismissed the same under Section 203 Cr.P.C.

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Learned counsel for the petitioner submitted that the order of the learned magistrate is bad and illegal. The complaint was not barred under the provisions of section 195 Cr.P.C. as the offence was committed outside the court and therefore private complaint is maintainable. For his submission he has relied upon the decision of Hon'ble Supreme Court reported in 2005(2) PLJR 236.

There are two parts of occurrence; first swearing of false affidavit. Annexure- 3/1 is the typed copy of the affidavit. It is needless to mention that affidavit is always sworn before a public servant or a person authorized to administer an oath or affirmation. Annexure-3/1 would go to show that it was sworn

before the court of Munsif. False statement on oath is punishable under Section 181 I.P.C. which runs as follows:-

> **"181. False statement on oath or affirmation to public servant or person authorized to administer an oath or affirmation.-** whoever, being legally bound by an oath [or affirmation] to state the truth on any subject to any public servant or other person authorized by law to administer such oath [or affirmation], makes, to such public servant or other person as aforesaid, touching the subject, any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine."

Section 195(1) (a)(i) Cr.P.C. lays down that cognizance for above offence can only be taken on complaint in writing of the public servant concerned. In this case, the Munsif was the competent authority before whom the affidavit was sworn.

In complaint case Sections 209 and 210 I.P.C. have been mentioned instead of 181 I.P.C. Section 210 I.P.S is not at all applicable in this case as no decree for sum has been obtained by the plaintiffs/opposite parties. So far section 209 I.P.C. is concerned it applies only when false claim is made in the Court. According to the complainant also false prayer for appointment of receiver was made in the Court on the basis of the affidavit. Section 195(1)(b)(i) Cr.P.C. provides that cognizance under Section 209 Cr.P.C. can only be taken on a complaint made in

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writing of that court.

The second part of the allegation does not constitute any criminal offence. It goes to show that without any order of the Court the attested copy of the order dated 18.4.1996 was forwarded to the police concerned. It does not constitute any offence under Sections 466, 468 and 471 Cr.P.C. It may be the case of administrative action against the staff concerned but not a criminal offence.

The decision cited by the learned counsel for the petitioner does not apply in this case. There is no case that any forged document was produced in the court. Swearing of false affidavit is always done before a public servant and not outside the court. Therefore, filing of private complaint for swearing false affidavit is apparently not maintainable.

From the above discussions, it is quite clear that the learned magistrate has rightly refused to take cognizance against the opposite parties. Accordingly, this Cr. Revision is dismissed.

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kanchan **(Ghanshyam Prasad, J.)**